

Electronically Filed

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
BARBARA FORLASTRO and ROBERT G. FORLASTRO,  
as Co-Administrators of The Estate of  
ROBERT J. FORLASTRO,

Case No.: 1:07-CV-3288  
(RPP)(FM)

Plaintiffs,

**AFFIRMATION IN  
OPPOSITION**

-against-

JAMES COLLINS,

Defendants.

-----X

Sara Luca Salvi, Esq., being an attorney duly admitted to practice law before this Court,  
under the penalties of perjury, hereby affirms, upon information and belief:

1. I am associated with the firm of Mead, Hecht, Conklin & Gallagher, LLP, attorneys for the defendant, JAMES COLLINS, and I am fully familiar with the facts and circumstances of this matter, as they are maintained in our file at the undersigned's office.
2. This Affirmation is being submitted in opposition to Plaintiffs' motion in opposition to Plaintiffs' motion to apply Connecticut law and to apply Connecticut's wrongful death damages law. As explained in the accompanying Memorandum of Law, the Law of New York should be applied to the damages being sought by Plaintiffs.
3. The Complaint alleges that defendant James Collins was operating the truck of his employer New York State Electric & Gas Corporation and struck plaintiffs' decedent causing serious injury and death. Plaintiffs' attorney concedes that on the date of the accident, Plaintiffs'

decedent was collecting garbage in the Carmel, New York area in the course of his employment. Plaintiffs' decedent purposely entered New York as a part of his job responsibilities. Plaintiffs' attorney also indicates decedent had decided to stop at a deli in Carmel, New York to get breakfast.

4. Defendant's domicile and residence is located in New York State. Further, Plaintiff's statement that "Mr. Collins frequently drives his vehicle in Danbury, Connecticut. . ." is irrelevant.

#### **Prior New York State Litigation**

5. On or about March 21, 2006, Plaintiffs commenced an action against the same defendant in this action, JAMES M. COLLINS, and against New York State Electric & Gas Corp. in Putnam County Supreme Court under Index No. 581/2006. The attorneys for Plaintiffs in the Putnam action were Burke, Miele & Golden, LLP. The Putnam County action sought damages for the injuries sustained by decedent on December 6, 2004 and for pecuniary loss sustained by the decedent's beneficiaries.

6. The defendants, JAMES M. COLLINS and NEW YORK STATE ELECTRIC AND GAS CORP. served a Verified Answer, dated May 3, 2006, along with discovery demands. This office appeared as the attorneys for both defendants in the Putnam County Supreme Court action.

7. Thereafter, Plaintiffs executed a Consent to Change Attorney form, dated August 1, 2006, which substituted Robert G. Forlastro, pro se, in place of prior counsel.

8. By letter dated August 23, 2006, Michael A. Stratton, Esq., of Stratton Faxon, sent a letter to Elizabeth M. Hecht, Esq., of Mead, Hecht, Conklin & Gallagher, LLP, requesting that an enclosed Stipulation of Discontinuance without prejudice for the Putnam County Supreme Court

action be executed. The Stipulation was executed by Robert G. Forlastro, Barbara Forlastro and by Elizabeth M. Hecht,, Esq., of Mead, Hecht, Conklin and Gallagher, LLP, the attorneys for the Defendants.

**Federal Action Was Commenced in the Southern District of New York**

9. On or about November 30, 2006, Plaintiffs, ROBERT G. FORLASTRO and BARBARA FORLASTRO, as Co-Administrators of the Estate of ROBERT J. FORLASTRO, filed an action against NEW YORK STATE ELECTRIC AND GAS CORP. and JAMES M. COLLINS, in the United States District Court, Southern District of New York with Case Number 06-CV-13591.

10. By Order, dated March 23, 2007, Senior U.S. District Judge William C. Conner ordered that the action be dismissed with prejudice based upon the failure to serve the Summons and Complaint and Plaintiffs' attorney's statement that Plaintiffs would not pursue the action.

11. By Order, dated March 28, 2007, Senior U.S. District Judge William C. Conner rescinded the March 23, 2007 Order and ordered that the action be dismissed without prejudice and without costs or attorneys' fees where the plaintiff informed the Court that he had commenced an identical action in United States District Court, District of Connecticut.

**District of Connecticut Action**

12. On or about October 2, 2006, Plaintiffs, BARBARA FORLASTRO and ROBERT G. FORLASTRO, as Co-Administrators of the Estate of ROBERT J. FORLASTRO, filed an action against defendant JAMES COLLINS in the United States District Court, District of Connecticut with Case Number: 3:06-CV-01541. Defendant JAMES COLLINS was represented by Marisa A. Bellair, Esq., and Steven J. Errante, Esq., both of Lynch, Traub, Keefe & Errante in

the District of Connecticut action.

13. A telephone conference was held on March 27, 2007 with Judge Robert N. Chatigny, where the issue of transferring the action to New York was discussed. The parties were to report to the Court by March 30, 2007 as to any stipulation to transfer the action to New York.

14. A stipulation to transfer the action to the United States District Court for the Southern District of New York was executed by the attorneys for the Plaintiffs and the attorneys for the Defendant. The Stipulation provided: "Pursuant to 28 U.S.C. § 1404(b), the parties, through undersigned counsel, are agreeable to the above action being transferred by the Court to the United States District Court for the Southern District of New York at White Plains."

15. United States District Judge Robert N. Chatigny approved the Stipulation to Transfer. Judge Chatigny added the following language:

"Approved. The parties consent to transfer the case to the United States District Court, Southern District of New York, White Plains Division, pursuant to 28 U.S.C. § 1404(a). All further pleadings or documents in this matter should be filed with the Clerk's Office of the United States District Court, Southern District of New York, White Plains Division . . ."

16. The case was thereafter transferred to the Southern District of New York, and an Answer was served on behalf of defendant JAMES COLLINS, by the law firm of Mead, Hecht, Conklin & Gallagher, LLP.

**WHEREFORE**, it is respectfully requested that this Court deny the Plaintiff's motion in its entirety and apply the Law of New York, along with such other and further relief as this Court deems just and proper.

Dated:           Mamaroneck, New York  
                 July 2, 2007

Yours, etc.,  
MEAD, HECHT, CONKLIN & GALLAGHER, L.L.P.

S/  
By: SARA LUCA SALVI(SS 6292)  
109 Spencer Place  
Mamaroneck, New York 10543  
(914) 899-3100